

Message Text

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12

ACTION PM-04

INFO OCT-01 EUR-12 ISO-00 CIAE-00 INR-07 NSAE-00 DODE-00
NSC-05 SP-02 SS-15 IGA-02 TRSE-00 OMB-01 MC-02 ACDA-07
COME-00 EB-07 ERDA-05 OES-06 H-01 L-03 SSO-00 NSCE-00
INRE-00 TVA-01 NRC-05 ERDE-00 PRS-01 STR-04 /091 W
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O 080804Z DEC 76

FM AMEMBASSY BERN

TO SECSTATE WASHDC IMMEDIATE 3603

C O N F I D E N T I A L BERN 5553

EO 11652: GDS

TAGS: MASS PFOR SZ

SUBJ: F-5E SALE - MEMORANDUM OF UNDERSTANDING ON OFFSET - AMBASSADOR
DAVIS DISCUSSION WITH CHARLES GROSSENBACHER

1. SUMMARY: I CALLED ON GRD CHIEF GROSSENBACHER ON DEC 6
AT HIS REQUEST. WE DISCUSSED THREE TVA AND ERDA CONTRACTS
ON WHICH BROWN-BOVERI HAS BID. I MADE IT CLEAR THAT THERE
IS LITTLE WE CAN DO TO HELP IN CASES WHERE THE MOU IS INVOKED
AFTER BIDS ARE OPENED, AS IN THE TVA CASE. I SAID I WOULD
RECOMMEND STATE SUPPORT SWISS REQUESTS FOR WAIVERS FOR THE
ERDA CONTRACTS. SEVERAL QUESTIONS CAME UP RELATED TO THE
MORE GENERAL ISSUES OF COUNTING, ETC. TO WHICH WE WOULD
APPRECIATE ANSWERS. FURTHERMORE, EVEN THOUGH BBC ACTED
TOO LATE IN THE TVA CASE, I BELIEVE STATE SHOULD SUPPORT THE
REQUEST FROM DOD THAT A WAIVER BE GRANTED IF THIS IS STILL
POSSIBLE. END SUMMARY.

2. ON DEC 6, ACCOMPANIED BY POL/ECON COUNSELOR, I CALLED
ON CHARLES GROSSENBACHER, CHIEF, ARMAMENTS BRANCH, (GRD)
FEDERAL MILITARY DEPT. AMBASSADOR KLAUS JACOBI,
DIV OF COMMERCE, AND RENE HUBER (GRD) ALSO PARTICIPATED.

3. GROSSENBACHER OPENED THE MEETING BY ASKING WHAT MORE
COULD BE DONE TO HELP BROWN-BOVERI OBTAIN A WAIVER OF
THE BUY AMERICAN PROVISION ON THREE CONTACTS: (A) BY
TVA, FOR 18 REACTOR FUEL PUMP TURBINES; (B) BY ERDA,
ON A PRINCETOWN UNIVERSITY CONTRACT FOR PARTS FOR THE
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TAKAWAK FUSION TEST REACTOR AND (C) BY ERDA, ON A

CONTRACT FOR THE NATIONAL ACCELERATOR LABORATORY. GROSSENBACHER SAID THE MOST URGENT CASE WAS THE TVA CONTRACT, ON WHICH HE THOUGH A DECISION WOULD BE MADE ON DECEMBER 9. GROSSENBACHER NOTED THAT THE SWISS PRESS WOULD NO DOUBT WRITE STORIES ABOUT THE LOSS OF THE TVA CONTRACT. HE GAVE US COPIES OF THE LETTERS SENT BY DEFENSE AND BY PROBST TO TVA, SAYING THAT AS FAR AS HE COULD SEE HE HAD TAKEN THE STEPS HE SHOULD. COULD WE SUGGEST ANY ADDITIONAL IDEAS?

4. I RESPONDED BY GIVING HIM OUR UNDERSTANDING OF THE FACTS IN THE TVA CASE, WHICH I SAID SEEM TO GIVE US VERY LITTLE ROOM FOR MANEUVER. (HE CALLED THE FOLLOWING MORNING TO CONFIRM THAT OUR UNDERSTANDING WAS CORRECT). AS FAR AS I WAS AWARE, BROWN-BOVERI (BBC) HAD NOT ASKED FOR A WAIVER UNTIL AFTER THE BIDS HAD BEEN OPENED. CUSTOMARY PRACTICE IS TO INFORM BIDDERS THAT SUCH A WAIVER IS CONTEMPLATED AT THE TIME THE SOLICITATIONS ARE SENT OUT. OTHERWISE DOMESTIC BIDDERS HAD EVERY RIGHT TO COMPLAIN THAT THEY WERE MISLED BY THE SPECIFICATIONS. TO TRY TO GO BACK NOW, AND ISSUE A NEW SOLICITATION, WOULD BE MOST DIFFICULT IF NOT CONTRARY TO LAW. I SAID I DID NOT KNOW WHY BBC HAD CHOSEN NOT TO INVOKE THE MOU MUCH EARLIER. PERHAPS IT WAS BECAUSE THEY HAVE OFTEN BID SUCCESSFULLY ON TVA CONTRACTS EVEN THOUGH THE BUY-AMERICAN MARGINS WERE APPLIED AND THEY DID NOT WANT THIS CONTRACT COUNTED UNDER THE MOU, THEREBY INCURRING THE 1.5 PERCENT FEE TO VSM.

5. GROSSENBACHER SAID HE THOUGH BBC WAS MOTIVATED BY FEAR OF CONGRESSIONAL, TRADE UNION OR OTHER PRESURES WHICH WOULD BE BROUGHT TO BEAR ON TVA IF TVA HAD ANNOUNCED THAT "BUY-AMERICAN" MIGHT BE WAIVED WHEN BIDS WERE SOLICITED. I SAID THAT WHATEVER THE PROBLEM OR PROBLEMS THAT PREVENT BBC OR OTHER SWISS FIRMS FROM INVOKING THE MOU, I HOPED WE COULD BRING THEM OUT IN THE OPEN AND TRY TO DEAL WITH THEM.

6. GROSSENBACHER SAID HE HAD GONE TO GE, THE MAIN COMPETITOR, AND TRIED TO OBTAIN ITS HELP. JACOBI MENTIONED CONFIDENTIAL

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THE ANTI-DUMPING CASE ON TRANSFORMERS AS A FACTOR, ALONG WITH OTHER ACTIONS INVOLVING GE, WHICH HAD GIVEN RISE TO IRRITATION AT BBC HEADQUARTERS. I REPLIED THAT IF IT WERE DEEMED USEFUL, I WOULD ENCOURAGE A VISIT BY HIGH-LEVEL GE REPS TO SWITZERLAND. GROSSENBACHER AND JACOBI SAID THEY WOULD DISCUSS THIS WITH BBC.

7. ON THE ERDA CONTRACTS, I SAID THAT I GATHERED AMBASSADOR PROBST HAD CALLED ON ADMINISTRATOR SEIMANS, THAT THE BUY-AMERICAN WAIVER HAD BEEN REQUESTED IN A MORE TIMELY FASHION, AND THAT I WOULD RECOMMEND THAT AN APPROPRIATE OFFICER OF THE DEPT OF STATE CONTACT THE ADMINISTRATOR IN SUPPORT OF THE REQUEST.

8. GROSSENBACHER ENDED THE MEETING BY SAYING THAT UNFORTUNATELY THE PRESS WOULD NOT GO BEYOND THE FACT OF ANOTHER LOSS IN ITS ASSESSMENT OF THE TVA CONTACT ISSUE, AND THAT AS THE MAN WHO HAD TO GO TO PARLIAMENT IN MARCH FOR APPROPRIATIONS FOR THE DRAGON ANTI-TANK MISSILE SYSTEM HE HAD HOPED FOR ONE REALLY LARGE OFFSET SUCCESS TO POINT TO. OBVIOUSLY THE LEARNING PROCESS WAS STILL GOING ON, AND HE HAD NO DOUBT THAT WE WOULD MEET OUR OBLIGATIONS IN THE TIME ALLOTTED. I REPLIED THAT IRRESPECTIVE OF PROSPECTS FOR ANY FUTURE SALES THE MOU STOOD ON ITS OWN AS AN OBLIGATION WE WOULD MEET. I SAID I HOPED THAT SUCCESSES WILL SOON COME.

9. EMBASSY COMMENT, QUESTIONS AND ACTION REQUESTED:

A. WHILE THERE MAY BE LITTLE THAT CAN BE DONE ON THE TVA CONTRACT, I RECOMMEND THAT WE TRY TO GET A LETTER TO THE TVA CHAIRMAN SUPPORTING DOD'S LETTER OF DEC 1 IF THIS IS STILL PRACTICAL AND IF WAIVER IS STILL WITHIN TVA'S DISCRETIONARY AUTHORITY. I ALSO RECOMMEND A LETTER FROM STATE TO ADMINISTRATOR SIEMANS OF ERDA SUPPORTING A WAIVER ON THOSE TWO CONTRACTS.

B. IN SPITE OF THE EFFORTS THAT HAVE BEEN MADE TO EDUCATE THE SWISSES, THEY STILL DO NOT UNDERSTAND OUR PROCEDURES AND REQUIREMENTS CLEARLY. I WOULD APPRECIATE IT IF THE

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DEPARTMENT COULD LOOK INTO THE POSSIBILITY OF PERSUADING NON-DOD AGENCIES TO INCLUDE A CLAUSE IN SOLICITATIONS, AUTOMATICALLY, TO THE EFFECT THAT BUY AMERICAN PROVISIONS MIGHT BE WAIVED FOR SWITZERLAND UNDER THE MOU. IF SUCH A CLAUSE CANNOT BE INCLUDED, CAN SOME WAY BE FOUND TO MAKE SURE THAT SWISS FIRMS KNOW WHAT THE RULES ARE? IT SEEMS TO ME WE COULD AVOID MISUNDERSTANDINGS IF WE TOLD SWISS FIRMS BIDDING ON A PROJECT WHEN, IN THE PROCESS, THEY HAVE TO INVOKE THE MOU IF THEY ARE TO STAND A CHANCE OF OBTAINING A WAIVER.

C. THIS RAISES ANOTHER QUESTION. SUPPOSE A SWISS FIRM, HAVING ASKED FOR A WAIVER UNDER THE MOU, WINS THE CONTRACT WITHOUT A WAIVER? (E.G, BY BEING MORE THAN 6 PCT BELOW OTHER BIDDERS): WOULD WE COUNT THE AMOUNT OF THE AWARE AS

OFFSET UNDER THE MOU? IF SO, WE SHOULD MAKE THAT CLEAR
TO THE SWISS NOW, NOT AFTER-THE-FACT.
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